IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 15 OF 2006.

Shri Deelip Apte,
Major in age, married,
Proprietor of the Firm,
M/s. Best Chicken, having its
place of business at
Municipal Market,
Bardez, Mapusa, Goa. ..... Petitioner
(Original Accused)

V e r s u s

1. Nilesh P. Salgaonkar,
major, married, resident of
Tivim, Bardez Goa.
(Original Complainant)

2. State of Goa,
(Through Public Prosecutor) ..... Respondents

Shri P. P. Singh, Advocate for the Petitioner.

Shri S. A. Samant, Advocate for the Respondent no.1.

CRIMINAL APPEAL NO. 60 OF 2005.

Nilesh P. Salgaonkar,
s/o. Shri Purushottam Salgaonkar,
major, married, resident of Madel,

Tivim, Bardez Goa. ..... Appellant
(Original Complaint)

V e r s u s

Shri Deelip Apte,
Major in age, married,
Proprietor of the firm run under
name and style of M/s. Best Chicken,
having its place of business at
Madel, Tivim, Goa. ..... Respondent

Shri S. A. Samant, Advocate for the Appellant.

Shri P. P. Singh, Advocate for the Respondent.

CORAM: N. A. BRITTO, J.

DATE: 6th July, 2006.

ORAL JUDGMENT

The subject matter of the dispute between the complainant and the accused are three cheques which have been dishonoured, the details of which are as follows:-

1. Cheque No. 4605574 dated 28.11.2003 for Rs.50.000/-.

2. Cheque No. 4605575 dated 28.11.2003 for Rs.50.000/-.

3. Cheque No. 4605576 dated 01.12.2003 for Rs.70.000/-.

2. Broadly stated, the case of the complainant is that the said three cheques were given by the accused to the complainant by way of payment of Rs.1,70,000/- advanced by the complainant to the accused in the first week of November, 2003. Likewise, it was the case of the accused that the said three cheques were given to the complainant by way of security. As regards the first two cheques, the complainant sent a notice to the accused dated 01.12.2003 and regarding the third cheque, the complainant sent the notice dated 09.01.2004. Both the notices were sent by registered A.D. and upon non-compliance of the said notices, the accused filed two complaints. The first complaint in respect of the two cheques came to be registered as C.C. no. 219/P/04/B while the second complaint came to be registered as C.C. no. 376/OA/04/C. The said two complaints were allotted to two different J.M.F.C.s and it appears that neither the complainant nor the accused made any efforts, as required in law to ensure that both the said complaints were tried by one and the said J.M.F.C. The first complaint ended in conviction of the accused by Judgment/Order dated 29.03.2005. The accused has been sentenced to undergo simple imprisonment of two months and to pay a compensation of Rs.1,00,000/- and in default of payment of compensation, the accused has been ordered

to undergo six month S.I. The accused carried an appeal against the said conviction to the Court of Sessions, being Criminal Appeal No. 23/04. However, the learned Additional Sessions Judge by Judgment dated 05.04.2006, was pleased to dismiss the same. Criminal Revision Application No. 15/06 arises from the conviction and sentence in respect of the first two cheques given by the accused to the complainant. The second complaint came to be dismissed and the accused acquitted by Judgment/Order dated 06.04.2005. It is against this Judgment that the complainant has filed Criminal Appeal No. 60/05. By consent of both the parties, the Criminal Revision Application as well as the Criminal appeal are being disposed of by this common Judgment as the facts as well as law applicable to both the cases are the same.

3. There is no dispute that the complainant had taken a loan of Rs.50,000/- from Pirna Co-operative Credit Society in which the accused has stood as a guarantor. There is also no dispute that the accused had taken a loan of Rs.5,00,000/- from Punjab National Bank for which the complainant and one Gajanan Mashelkar had stood as guarantors and as such had received a notice dated 08.10.2003, calling upon them to clear the balance amount of the said loan of Rs.5,55,022/-. The complainant had

also stated that the complainant was having a Grocery shop and a STD pay phone at Madel, Tivim, Goa, and that prior to the issue of the suit cheques to him, two to three and half years before, the accused was frequently visiting his Grocery shop and with the passage of time, they became friends. The complainant had also stated that the accused used to purchase household articles from his Grocery shop and also used to come to the said STD booth for the purpose of phoning but whenever the accused purchased the household goods from his Grocery shop, the accused always cleared the bills in cash and that his relations with the accused were very cordial and both used to visit each other's houses atleast once a week. The aforesaid facts have been denied on behalf of the accused in the cross examination. However, if the complainant and the accused could stand sureties for one another, there is no reason why the said facts stated by the Complainant could not be accepted and once accepted, the said facts would show that the complainant and the accused were close family friends.

4. It is now common knowledge that the Negotiable Instruments Act, 1881, was amended with a view to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts

or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers, as the evil practice of issuing cheques in settlement of liabilities without there being adequate amount in the accounts had become rampant and the amendment was carried out with a view to curb the same effectively by enacting a stringent law while at the same time taking care to safeguard the interest of honest drawers. If that be the object of the amendments, the provisions of the Act are required to be interpreted in the light of the said objects intended to be achieved. The Apex Court in the case of ***M/s. Kusum Ingots & Alloys Ltd. v. M/s. Pennar Peterson Securities Ltd., & Ors. (AIR 2000 S.C. 954),*** has set out the ingredients which are required to be proved for making out a case under Section 138 of the Negotiable Instrument Act, 1881, ("*Act*" for short) and they are :

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

5. We will first consider the aspect of the notice which has been held against the accused both by the acquitting J.M.F.C. as well as the convicting J.M.F.C. (Expressions used for brevity's sake). The learned acquitting J.M.F.C. had observed that the complainant had produced on record the notice issued by the complainant and also envelope by which the notice was returned unclaimed. It was observed that the address of the

accused on the envelope as well as in the present complaint was the same. Besides the address shown in the notice, issued by the Punjab National Bank, of the accused was also the same. It was further observed that the accused was served with summons on the said address and being so, considering the presumption under Section 27 of the General Clauses Act and also considering the decision in the case of ***K. Bhaskaran v. Sankaran Vaighyan Balan & anr. ((1999) (7) S.C.C. 510),*** that when a sender has dispatched a notice by post with correct address written thereon, such a notice can be deemed to have been served on the sendee unless he proves that it was not actually served and that he was not responsible for non-service. On behalf of the accused, it is contended that the said notice was not sent at the correct address of the accused and, therefore, could not have been deemed to have been served. In this context, it is pointed out that the house number given in the notice of the Punjab National Bank, dated 08.10.2003, is House no. 1483/1 while the registered notice sent to the accused dated 09.01.2004, had House no. 459/1/D. It is also pointed out that in the cause title of the complaint, no house number has been given. On behalf of the accused, reliance has been placed on the case of ***S. S. Ummul Habiba, Proprietor M/s. Alim Auto Supplies v. B. Rajendran (2004 (2) DCR 449)*** and ***Shashi Finance Corporation v. Super Shine***

Abrasives (P) Ltd., Hyderabad & Ors. (2004 (1) Bankmann 158(A.P.)) as well as the decision of the Apex Court in the case of ***V. Raja Kumari v. P. Subbarama Naidu & anr. (2004(8) Supreme 4).*** In the first case of ***S. S. Ummul Habiba*** (supra), the learned Judge of Madras High Court referred to the case of ***K. Bhaskaran v. Sankaran Vaighyan Balan & anr.***(supra), and observed that "Giving Notice" to the drawer in the correct address itself was held to be sufficient in the factual matrix of the case and the same could not be applied to the case at hand." It was further observed that the return of postal cover as "Intimated-Unclaimed" by itself would not amount to constructive notice when it is not averred by the complainant in the complaint that the accused is evading the service and although in appropriate cases, deemed service is to be accepted by the Court, such presumption of deemed service is not a matter of course in all cases. To raise the presumption of deemed notice, there should be clear averment in the complaint that the complainant had sent the statutory notice on demand intimating the dishonour of cheque and that the accused was evading the service. In the absence of such averment, such presumption of deemed notice could not be raised. In the case of ***Shashi Finance*** (supra), the Court held that the presumption of deemed service could not be drawn when the cover sent to a wrong address was returned. The case of ***K. Bhaskaran v.***

Sankaran Vaighyan Balan & anr. (supra) was followed in ***V. Raja Kumari v. P. Subbarama Naidu & anr.*** (supra), but what was noticed in that case was that the notice was returned with endorsement as house locked and, therefore, what was held in the case of ***V. Raja Kumari*** would not be applicable in this case at hand. In the case of ***K. Bhaskaran v. Sankaran Vaighyan Balan & anr.*** (supra), the Supreme Court was considering whether a cause of action would arise in a case where the notice was returned with endorsement as "unclaimed" and the Supreme Court held that on the part of the payee, he has to make a demand by giving notice in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such 'giving', the travails of the prosecution would have been very much lessened but the legislature says that failure on the part of the drawer to pay the amount should be 15 days "of the receipt" of the said notice. It is therefore clear that "giving notice" in the context is not the same as receipt of notice. Giving is a process of which receipt is an accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address. The Court then referred to the Black Law's Dictionary and observed that if a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to

start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the Court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure. Referring to a notice which is unclaimed, the Supreme Court proceeded to refer to Section 27 of the General Clauses Act, 1897, and observed further that no doubt Section 138 of the Act does not require that the notice should be given only by "post". Nonetheless the principle incorporated in Section 27 of the Act, profitably be imported in a case where the sender has despatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice. All the three Courts below, by referring to the decision of the Supreme Court in ***K. Bhaskaran v. Sankaran Vaighyan Balan & anr.***(supra) have held that the notice in the cases at hand was duly served on the accused. There was also an

averment in the complaint that the accused had intentionally disclaimed the notice. There is no dispute that the complainant and the accused are both residents of ward Madel, in Tivim Village, Goa. This address was given by the accused when he was examined under Section 313 of the Code. It is true that the accused in his statement under Section 313 stated that he had not received the notice but he did not state what was his correct address. It has been submitted on behalf of the accused that the correct address of the accused is House no. 1483/1 at Madel, Tivim, as mentioned on the notice dated 08.10.2003 of Punjab National Bank, but this submission cannot be accepted in view of the silence as regards the same from the accused. As already seen, the address of the accused was given as Madel, Tivim, Bardez, Goa. In the notice dated 08.10.2003, House no.1483/1 was mentioned and there is no dispute that the accused received the said notice. In the statutory notice dated 09.01.2004, the notice with AD was sent to the accused C/o. Best Chicken, House no. 451/1/D at Madel, Tivim, Goa, and it is this notice that the accused claims he has not received. The address given in the cause title of the complaint does not make mention of any house number but has described the accused as Proprietor of M/s. Best Chicken. There is no dispute that the accused was served at this address with the summons of the Court. The learned Additional Sessions Judge has noted

that the postal endorsement showed that the accused was intimated on 23.12.2003 before the postal article was returned as unclaimed. The learned Additional Sessions Judge also considered the contention of the accused and has rejected the same and, in my view rightly, contention of the accused being that the complainant had deliberately put residential address on the legal notice fully knowing that he would not be available in the house during that time. Before this Court, my attention was also drawn to a statement in the cross examination of the complainant wherein the complainant had stated that the accused had gone to Kolhapur to sell his residential property to repay his money but that solitary statement cannot be connected certainly to the time when the complainant had sent the said notice to the accused. As already observed, all the said three notices, two of which mentioned house number differently, show that the accused was a resident of ward Madel, of Village Tivim, in Bardez Taluka. In the absence of a house number, it would not have been difficult to the postman to reach to the house of the accused and make an attempt to deliver the registered postal articles sent by the complainant to the accused, in a small ward of Tivim Village. In this case, the postal articles were returned with endorsements “intimated” and “unclaimed”. Presumption of service clearly arises in the facts of the case. Even in the absence of the house number, the

accused has been served with summons from the Court. It appears that both the complainant and the accused are residents of the said ward Madel, Tivim, and being so, it would not have been difficult for the postman to locate the accused at Madel, Tivim, with a view to serve the registered postal article. In my view, the conclusions arrived at by all the three Courts below that the notice was sent at the correct address of the accused and, therefore, is presumed to have been served, could not be faulted. It is also pointed out on behalf of the complainant, that on behalf of the accused a suggestion was put suggesting that the accused was not available during day time meaning thereby he was otherwise available at the given address. In this case, the notice was sent by registered post to the correct address of the accused and the same is therefore deemed to have been served on the accused in terms of Section 27 of the General Clauses Act, 1897. The presumption available under Section 27cannot be rebutted either by way of mere suggestion or by mere denial in the statement under Section 313 of the Code. The Courts below have rightly concluded that the notice was duly served on the accused.

6. Coming to the merits of the case, the learned acquitting J.M.F.C has tried to punch small holes in the evidence of the Complainant and

picked up certain facts stated by him to disbelieve his version that the complainant had advanced Rs.1,70,000/- to the accused for the payment of which the accused had given the cheques. These very points taken by the acquitting J.M.F.C. against the Complainant have been dealt with and explained by the learned Additional Sessions Judge, as not affecting the complainant's case. It has been submitted on behalf of the accused that in view of conflicting versions given by the complainant, the complainant could not be believed and thus the complainant had failed to prove the initial burden which was on the complainant that the complainant had given a loan of Rs.1,70,000/- to the accused. It is submitted that the inconsistencies found by the learned acquitting J.M.F.C., go to the very root of the case of the complainant, and therefore, the contention that the complainant had advanced a loan, could not be accepted and, on the contrary, it is the plea of the accused that the said cheques were given by way of security, had to be accepted. In this context, on behalf of the accused, reliance has been placed on the case of ***A. Bhoosanrao v. Purushothamdas Pantani and anr. (Judgment on Dishonour of cheques, page 59)***, wherein it was observed that the initial burden was on the complainant to prove that the cheque was given by the accused in discharge of a legally enforceable debt. To the same effect is the Judgment of

this Court in the case of ***Goa Handicrafts Rural and Small Scale Industries Development Corporation Ltd. v. M/s. Samudra Rops Pvt. Ltd. & Ors. (2006(2) Crimes 409)***, wherein this Court observed that the initial burden was on the complainant and that was merely to show that the cheque had been drawn by the drawer in favour of the complainant and then it would be the duty of the accused to rebut the presumption. The Apex Court in the case of ***M.M.T.C. Ltd. & anr. v. Medchl Chemicals and Pharma (P) Ltd & anr. ((2002) 1 S.C.C. 234)***, had observed that there is no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondent (accused) and this they had to discharge at the trial. In the cases at hand, the complainant had averred in the complaint that the complainant had a business transaction with the accused and in partial discharge of his liability was due and liable to pay certain sums and thereafter the complainant had spelt out as regards the issue of cheques which were given by the accused in discharge of his liability. The learned acquitting J.M.F.C. observed that the complainant in his deposition had no where disclosed what was the business transaction which he had with the accused for which an amount of Rs.70,000/- was due from the accused. The complainant although had not

stated in his complaint or in his affidavit in evidence, that the complainant had advanced a sum of Rs.1,70,000/- to the accused, the complainant had made this aspect clear in his cross examination, and in my view, there was no fundamental inconsistency in the version given by the complainant in the complaint, in the affidavit in evidence as well as in cross examination which could be said to be mutually exclusive. In other words, there were no inconsistencies in the case of complaint. The learned Additional Sessions Judge, rightly distinguished the case of ***M/s. Ganesh Flour Mills v. Jeewan Kumar and anr. (2004 (2) DCR 574)*** and observed that the word 'transaction' could be with respect to anything and it is not required to give details of such transaction in the complaint. Giving of a loan certainly could be a part of a business transaction and only because the complainant had not stated in the complaint that he had given a loan to the accused on account of which the liability towards the cheque had arisen and used the words business transaction, the case of the complainant could not be disbelieved. The learned acquitting J.M.F.C. found that the complainant ought to have examined his brother. In this context, the complainant had stated that he was not having Rs.1,70,000/- with him and, therefore, he could not give the said amount in the last week of October 2003 and he could procure the same in the first week of November 2003, which he had

lent to his brother and then gave the same to the accused. The complainant also stated in further cross examination that the said loan of Rs.1,70,000/- was given to the accused from his personal savings. On behalf of the accused, it is submitted that if the complainant had borrowed money from his brother, the complainant would not have given the money from his savings. If the complainant's statement is read as a whole, it only means that he had lent some money to his brother, for which he had to wait to be handed over to the accused but the entire amount was from his personal savings. It is also pointed out that the complainant was a person who had a liability towards Pirna Co-operative Credit Society and, therefore, it could not be expected that the complainant would give loan to the accused. Here it is to be noted that the complainant and the accused were very good friends and an obligation towards a friend would certainly come before the obligation towards the said Pirna Co-operative Credit Society. After all, the complainant was a commerce graduate having his own Grocery business and a STD pay phone and, therefore, the contention that the complainant was a man of no means and therefore could not arrange the said sum of Rs.1,70,000/-, cannot be accepted. Next it is submitted that the complainant has not produced receipt or an agreement in support of the loan given by the complainant to the accused. Here again, it must be

observed that if the complainant and the accused, were friends, normally a friend would not insist that the accused, as a friend, issues a receipt for the payment of the loan amount and would have been satisfied by accepting of the cheques by the accused in payment of the said loan. On behalf of the complainant, it is submitted that if the cheques were given as a matter of security, then the accused also ought to have entered into a written agreement, at the time of giving of cheques. The learned J.M.F.C. has also held against the complainant the fact that the complainant had not shown the amount advanced by him in his income tax returns. I do not think that every person who gives friendly loans does in all cases show such loans in their income tax returns more so if they are payable on demand after short time. The learned acquitting J.M.F.C. entirely lost sight of the several presumptions which the law has enacted in favour of the complainant. As already stated in the case at hand, the complainant had sufficiently discharged his initial burden by deposing that the complainant had given a loan in the sum of Rs.1,70,000/- towards the repayment of which the accused had issued the said cheques. In one of the cases, the accused took a plea that although the cheque was signed and filled by him, the amount of the loan was not written by the accused. In this context, it may be stated that the complainant had denied the suggestion that he had taken three

blank cheques without the date and amount from the accused as security. As regards the date, reference could be made to Section 118(b) of the Act, which provides that only when the contrary is proved, a negotiable instrument is presumed to have been made on the date shown on the instrument. The accused had failed to rebut the said presumption, for, a mere suggestion in that regard or for that matter, a bare denial under Section 313 of the Code was not sufficient to rebut the said presumption. Once it is accepted and held that the cheque was completed in all respects by the accused, there is no reason why it should not be inferred that the accused has also completed the same as to the amount written thereon. Once it is held that the accused had issued the cheques in the manner stated by the complainant, the entire plea of the accused that he had given them by way of security had to fail. In this context, the accused in C.C. no. 376/OA/04/C stated thus:

> "I had taken house loan from Punjab National Bank, Mapusa Bank and complainant in the present case Nilesh Salgaonkar, is the guarantor for the said house loan. I am a defaulter in paying the said house loan to the Punjab National Bank, being a defaulter in clearing the housing loan,

> Manager, Punjab National Bank, issued notice to me and to guarantor Nilesh Salgaonkar. Since the house loan was to the tune of Rs.5 lakhs, complainant Nilesh Salgaonkar told me as a security that I should give him some cheques as a future security so that in the long run, if I fail to pay the said loan amount atleast the said security given by me would be helpful to him in the long run. Accordingly, I gave three cheques in the name of Nilesh Salgaonkar and I had signed the said cheques without mentioning the amount to be paid to Nilesh Salgaonkar. All the three cheques were undated."

7. Admittedly, the complainant and the accused had received a notice dated 08.10.2003, from the said Punjab National Bank, calling upon them to clear the amount due on the loan borrowed by the accused and to which the Complainant was one of the guarantors. It is not the case of the accused that he had enough money with him to repay the said loan, if at all the complainant had approached him, after receipt of the said notice. The accused in fact has not spelt out in his said 313 statement as to how the three cheques given by him as security to the complainant were to be used. It has been submitted on behalf of the accused that the said three cheques

were given to the complainant so that in case the Bank filed a suit against the complainant and the complainant was compelled to make the payment towards the said sum due to the said Punjab National Bank, the said cheques would give security to the complainant. I am still at pains not to understand as to how the said arrangement was to work. The learned Additional Sessions Judge has noted that the balance amount in the account of the accused was 238.34. If the balance amount of the accused in the account never exceeded a sum of Rs.245/-, one fails to understand as to what sort of security the accused had given to the complainant by way of the said cheques. The learned acquitting J.M.F.C. has proceeded to examine the case of the complainant as if the complainant had no presumptions in his favour. She might have been right in case the law did not create the three sets of presumptions which have been created. This is a case, as already noted, where the complainant had discharged his initial burden that he had advanced to the accused a sum of Rs. 1,70,000/- and in payment of the same, the accused had given the said three cheques. The law as regards presumptions is well settled by three Judges of the Apex Court in the case of ***Hiten P. Dalal v. Bratindranath Banerjee ((2001) 6 S.C.C. 16)***, wherein the Apex Court has again referred to a Constitution Bench Judgment in the case of ***Dhanvantrai Balwantrai Desai v. State of***

Maharashtra (AIR 1964 S.C. 575) and held that Sections 138 and 139 of the Act require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn. It has held that it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption has been established. The effect of these presumptions is to place the evidential burden on the accused of proving that the cheque was not issued towards the discharge of liability. In fact there are mandatory presumptions as the very words of the Section show but, at the same time, they are rebuttable presumptions. The view held by the Supreme Court in the case of ***Hiten P. Dalal v. Bratindranath Banerjee*** (supra), has been followed in the case of ***K. N. Beena v. Muniyappan & anr. ((2001) 8 S.C.C. 458)***. As stated by this Court in the case of ***Santan Financers and Real Estate Pvt. Ltd. v. Devapa A. Sarvi and anr. (2005 (1) Goa L. R. 390)***, a presumption available under Section 139 of the Act in favour of the complainant is a rebuttable presumption but the same cannot be rebutted only by suggestions or statements given by the accused under Section 313 of the Cr.P.C. In the case at hand, the accused chose not to step in the witness box to try to rebut the said presumption. The said presumption also could not have been said to be rebutted by the accused in the cross examination to

which reference has already been made. In my view, considering the facts of the cases, the learned acquitting J.M.F.C. was certainly not justified in acquitting the accused under Section 138 of the Act. On the other hand, the conviction of the accused by the convicting J.M.F.C. and as upheld by the learned Additional Sessions Judge in Criminal Appeal No. 23/04 , could not be faulted. Both the said Courts have exhaustively dealt with the case of the complainant viz a viz the defence taken by the accused and has come to the conclusion that the case of the complainant was proved beyond reasonable doubt against the accused. As a result, there is no merit in the Criminal Revision Application No. 15/06 and, therefore, the same is hereby dismissed.

8. As regards Criminal Appeal No. 60/05, for the very reasons discussed herein above, the acquittal of the accused under Section 138 of the Act, cannot be sustained. The Judgment and Order dated 06.04.2005 of the learned J.M.F.C. in C.C. No. 376/OA/2004/C therefore, deserves to be set aside and consequently the accused is hereby convicted under Section 138 of the Act for failing to pay the amount due to the complainant under the said cheque of Rs.70,000/- dated 01.12.2003.

9. At the time of hearing on the point of sentence on behalf of the accused, the sentence imposed by the convicting Magistrate has been brought to my notice. In the said case, for default in payment of the amount due on the cheque of Rs.1,00,000/-, the learned J.M.F.C., was pleased to sentence the accused to undergo S.I. for two months and to pay a compensation of Rs.1,00,000/-, and in default ordered the accused to undergo six month S.I. With a view not to have disparity in the sentence, I hereby sentence the accused under Section 138 of the Act, to undergo S.I. of 45 days and to pay compensation of Rs.70,000/- in default to undergo S.I. of four months. The sum of Rs.50,000/- deposited by the accused before the trial Court pursuant to Order dated 13.04.2006, shall be paid to the complainant, to be adjusted from the compensation ordered to be paid.

9. By consent, the accused is given time of two weeks either to surrender or pay the amount due.

N. A. BRITTO, J.

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